

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PROPOSED
Rules I, II, and III pertaining to the) ADOPTION
imposition of an administrative fee for)
alcohol or drug test refusal) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Justice proposes to adopt the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice Motor Vehicle Division no later than 5:00 p.m. on June 8, 2018, to advise us of the nature of the accommodation that you need. Please contact Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, P.O. Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-1776; or e-mail msnowberger@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I IMPOSITION OF ADMINISTRATIVE FEE FOR ALCOHOL OR DRUG TEST REFUSAL (1) Upon notification of a driver's refusal to submit to one or more alcohol or drug tests, the department shall impose an administrative fee.

(2) The administrative fee for each refusal is in addition to any other fee the department shall impose against a driver.

AUTH: 61-8-402, MCA
IMP: 61-8-402, MCA

NEW RULE II PAYMENT (1) A driver shall be otherwise eligible and pay the administrative fees owed before the department may reinstate a driver's license or privilege to drive.

AUTH: 61-8-402, MCA
IMP: 61-8-402, MCA

NEW RULE III FEES DEPOSITED IN STATE SPECIAL REVENUE FUND
(1) All funds collected for the administrative fee shall be deposited in the blood-draw search warrant processing account in the state special revenue fund and shall be used to provide forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(2) Funds in the account created in (1) shall be appropriated by the legislature for the purposes provided in 61-8-402, MCA, and shall be distributed in accordance with the Montana Operations Manual accounting policies.

AUTH: 61-8-402, MCA

IMP: 61-8-402, MCA

REASON: The 2015 Montana Legislature adopted House Bill 488, which made numerous changes to Montana's DUI laws. Among those changes was the imposition of an administrative fee of \$300 for lawfully arrested individuals who refuse to submit to a blood or breath test to determine any measured amount or detected presence of alcohol or drugs in the person's body. The fee is to be collected by the Montana Department of Justice (DOJ) and used solely to support the Montana Crime Lab's forensic analysis program to determine the presence of alcohol or drugs from those individuals who submit to such blood or breath tests.

The legislation also mandated that DOJ adopt rules for the collection, distribution, and strict accountability of any funds collected via this administrative fee. New Rules I and II are addressed to the subject of collection of the fee and New Rule III is addressed to the distribution and accountability subjects. New Rule I is necessary because there are other statutorily imposed fees which apply to such drivers. New Rule II is necessary because there are other statutory requirements, apart from the payment of this fee, which such drivers must comply with before their driver's licenses can be reinstated. New Rule III is necessary to provide guidance as to the proper distribution and accountability for the fees collected.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, P.O. Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-1776; or e-mail msnowberger@mt.gov, and must be received no later than 5:00 p.m., June 22, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michele Snowberger at the above address no later than 5:00 p.m., June 22, 2018.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. In 2017, there were 2050 individuals who were reported to have refused a drug or alcohol test. Thus, ten percent of those directly affected has been

determined to be 205 persons based on the number of implied consent suspensions in 2017.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail and email on May 3, 2018.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

10. In 2017, the department collected \$201,850 in fees from drivers who refused an alcohol or drug test.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State May 15, 2018.